

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 07 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

NORA LISSETTE CABALLERO DE
MARTINEZ; et al.,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 04-76566

Agency Nos. A78-196-726

A78-196-727

A78-196-728

A78-196-729

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges.

Nora Lissette Caballero de Martinez, and her children Linduara Isabel, Fredy Armando, and Sinthia Dahena, are natives and citizens of Honduras. They petition pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

their appeal for lack of jurisdiction on the ground that they waived their right to appeal in exchange for a grant of administrative voluntary departure. We review questions of jurisdiction *de novo*. See *Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). We grant the petition for review and remand.

We conclude that the issue of whether petitioners' waiver of appeal was knowing and intelligent was properly before the BIA, and should have been addressed by the agency. In their notice of appeal to the BIA, petitioners exhausted the issue by contending that the proceeding was not translated into their native Spanish and that they did not understand the consequences of the decision. See *Ladha v. INS*, 215 F.3d 889, 903 (9th Cir. 2000) (holding that issues raised in a notice of appeal are properly exhausted); see also *Sembiring v. Gonzales*, 499 F.3d 981, 990 (9th Cir. 2007) ("It is a long-established principle that the submissions of pro se aliens should be liberally construed."). Accordingly, we remand the issue to the BIA to make a determination in the first instance. See *INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.